



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/172276

PRELIMINARY RECITALS

Pursuant to a petition filed February 25, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Grant County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 16, 2016, by telephone.

The issue for determination are (1) whether petitioner's appeal was timely, and (2) whether the Department correctly sought to intercept the petitioner's state income tax refund to collect an overpayment of FoodShare benefits.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] ES Spec.
Grant County Department of Social Services
Hwys 35 and 61 South
P.O. Box 447
Lancaster, WI 53813

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Monroe County.

2. On February 23, 2015, the Department mailed a *Notification of FS Overissuance* and worksheet to the petitioner at his correct and last known mailing address of [REDACTED]. The *Notification* advised the petitioner to file any appeal of the overpayment within 90 days. The petitioner believed that another FS household member, [REDACTED] intercepted this notice and did not show it to him.
3. The Department mailed written notice of a negative action to the petitioner's correct mailing address of [REDACTED] on **July 17, 2015**. The negative action was notification of state income tax refund interception. Specifically, the interception notice states that an unpaid FS debt of \$1,912.00 remained for possible interception. The notice also advised the petitioner to file an appeal of the interception certification within 30 days of the July 17, 2015, notice. The petitioner moved out of the residence that he shared with [REDACTED] in January 2016.
4. The petitioner filed a hearing request with the Department on February 25, 2016.
5. The Department recouped a portion (\$130) of the overpayment from [REDACTED]'s monthly ongoing FS benefits. The Department recovered more than the remaining balance due via tax refund interception in 2016, leaving a current balance of zero remaining for collection.
6. The Department concedes that it "over-collected" \$26 from the petitioner's tax refunds. The Department has agreed to mail a check for \$26 to the petitioner at his current mailing address of [REDACTED] on March 18, 2016. *See*, email from [REDACTED], PACU.

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning FS eligibility or overpayment must be filed within 90 days of that determination. 7 C.F.R. § 273.15. An appeal from a state tax refund interception notice must be filed within **30 days** of the date of the interception notice. Wis. Stat. §49.85(3)(a)2. The petitioner's February 25, 2016 appeal is more than 30 days from the July 2015 interception notice. Thus, no jurisdiction exists for me to review the correctness of the 2015 interception decision.

CONCLUSIONS OF LAW

1. The petitioner's February 2016 appeal was untimely with respect to the Department's July 2015 refund interception certification.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and

why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of March, 2016

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 17, 2016.

Grant County Department of Social Services
Public Assistance Collection Unit